

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA**

DONALD MOELLER,	:	
Plaintiff,	:	
v.	:	
	:	
DOUGLAS WEBER, Warden,	:	Civ. 04-4200
South Dakota State Penitentiary,	:	
	:	
DENNIS KAEMINGK, Acting Secretary	:	RESPONSE TO LETTER
in His Official Capacity as	:	
Secretary of Corrections,	:	
	:	
DOES 1-20, Unknown Employees or	:	
Agents of South Dakota Dep't	:	
of Corrections	:	
Defendants.	:	
	:	

Plaintiff, Donald Eugene Moeller, by and through undersigned counsel, respectfully files the following Response to the Letter on this Court's docket, dated October 9, 2012. (Doc. 369.) That Letter, purportedly from Mr. Moeller, asks that the Court terminate the Arkansas Federal Public Defender as counsel. The undersigned respectfully requests that the Court allow him to remain as counsel for the purpose of fulfilling his ethical obligations as set forth below.

There is evidence in this record that Mr. Moeller is not competent to voluntarily dismiss this case. Further, by definition, a client cannot waive a challenge to his competency. Under the American Bar Association's Model Rule of Professional Conduct 1.14 and South Dakota's Ethics Rule 1.14 ("Client with Diminished Capacity"), the undersigned is obligated to take reasonable, protective measures on a client's behalf if counsel reasonably believes the client has "diminished capacity" and "is at risk of substantial physical, financial or other harm." The undersigned certainly has a good faith belief after reasonable investigation that Mr. Moeller's decisions are not voluntarily

or competently made and, in accord with Rule 1.14, counsel intends to pursue any further reasonable protective measures as may be necessary.

Dated in Little Rock, Arkansas, this 9th day of October, 2012.

Respectfully Submitted,

JENNIFER HORAN
FEDERAL DEFENDER

By: /s/ Scott W. Braden
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For: Donald E. Moeller, Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of October, 2012, a copy of the foregoing Response to Letter was served via the CM/ECF electronic filing system on all counsel of record.

By: /s/ Scott W. Braden
Scott W. Braden